



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARIBOU PLACE  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFL OPM**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- An Order of Possession for a Mutual Agreement to End Tenancy pursuant to section 55.

Both the landlord and the tenant attended the hearing. The landlord was represented at the hearing by its representative, BT ("landlord"). As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### **Issue(s) to be Decided**

Should the mutual end to tenancy be upheld or cancelled?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence, including diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed, one-year tenancy began on August 1, 2019 with the named landlord, the tenant and her boyfriend at the time. Rent was set at \$845.00 per month and a security deposit of \$422.50 was

collected. The landlord testified the rent is current and payment for November's rent has been paid.

The landlord testified that immediately upon moving in, the tenants began to fight between themselves. The landlord provided an incident report dated August 12<sup>th</sup> from the tenant asking that her boyfriend be removed from the lease. There was another fight on August 20<sup>th</sup> and the landlord provided another incident report dated August 20<sup>th</sup> whereby the boyfriend alleges the fighting is mutual and that the best option would be for them to go their separate ways.

On August 23, 2019, the landlord, the tenant and the boyfriend/co-tenant signed a mutual agreement to end the tenancy, provided as evidence in these proceedings. The document, entitled **Dissolution of Lease** indicates the tenancy will come to an end on September 30, 2019 at 1:00 p.m. and that effective of this date, all parties are released from the lease and all financial obligations therein, without penalty of any kind.

The boyfriend/co-tenant signed a further form the same day, entitled Removal from Lease indicating he would be removed from the lease; the lease will remain with the tenant/applicant until the lease concludes with her on September 30<sup>th</sup>. The boyfriend/co-tenant received his half of the security deposit of \$211.25. A copy of the Removal from Lease document was provided as evidence.

The landlord testified that on August 29<sup>th</sup>, they received from the tenant a further dated and signed **Notice to Vacate** indicating she is providing a one month notice to vacate the premises and will be moving out as of September 30, 2019. Reason for moving stated is: lease ended. This document was also provided as evidence.

The tenant testified the property manager in this hearing and the building manager have communication difficulty. The property manager doesn't understand her situation of being under mental strain from the breakup. The remainder of the tenant's testimony I found to be unclear, confusing and unrelated to issue of whether the mutual agreement to end the tenancy should be upheld or cancelled. In response to my questions as to whether she signed the **Dissolution of Lease** and **Notice to Vacate** documents, the tenant acknowledges she signed them both although she states she felt she had to sign them or the landlord would take legal action against her.

### Analysis

Section 44(1) of the *Act* states:

**A tenancy ends only if one or more of the following applies:**

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 *[tenant's notice]*;
  - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
  - (ii) section 46 *[landlord's notice: non-payment of rent]*;
  - (iii) section 47 *[landlord's notice: cause]*;
  - (iv) section 48 *[landlord's notice: end of employment]*;
  - (v) section 49 *[landlord's notice: landlord's use of property]*;
  - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
  - (vii) section 50 *[tenant may end tenancy early]*;
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;**
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

In this case, there is clear and unequivocal evidence to show both the parties agreed in writing to end the tenancy on August 23<sup>rd</sup> when they signed the **Dissolution of Lease** document. If the tenant had any indecision as to whether she should or should not sign the document, she should have taken an opportunity to review it before signing it. The tenant has not supplied any evidence to show she did. Secondly, the tenant has further emphasized her intention to end the tenancy when she signed the **Notice to Vacate** document on August 29<sup>th</sup>. The tenant has made it clear that as of that date, she wanted an end to the tenancy.

I am satisfied the parties have entered into a mutual agreement to end the tenancy in writing and that the tenancy ended in accordance with that agreement at 1:00 p.m. on September 30, 2019.

The tenant continues to occupy the rental unit up to the date of the hearing, November 7<sup>th</sup>. *Residential Tenancy Policy Guideline #3* states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

The parties agree the tenant has paid rent for the entire month of November and I find the landlord is therefore entitled to an Order of Possession effective November 30, 2019 at 1:00 p.m.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 p.m. on November 30, 2019. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 07, 2019

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Residential Tenancy Branch